

BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition
to Revoke Probation Against:

ANTONIO MENA
8813 Little Oaks Way
Stockton, CA 95209

Respiratory Care Practitioner
License No. 17277

Respondent.

Case Nos. R-1950/R-2020

OAH No. N2006050068

DECISION AFTER NON-ADOPTION

The matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, in Sacramento, California, on July 3, 2006.

Complainant was represented by Catherine Santillan, Senior Legal Analyst,¹ Health Quality Enforcement Section, Department of Justice, State of California.

Antonio Mena (respondent) appeared and represented himself. Evidence was received and the matter submitted on July 3, 2006.

On August 8, 2006, the Board issued a Notice of Non-Adoption of Proposed Decision. Thereafter, the Board requested written argument due on October 17, 2006. Written argument having been received from complainant and respondent, and the time for filing written argument in this matter having expired, the entire record, including the transcript of said hearing, having been read and considered pursuant to Government Code section 11517, the Board hereby makes the following decision:

FACTUAL FINDINGS

1. Stephanie Nunez, Executive Officer, Respiratory Care Board (the Board), State of

¹ Representation of a party in a proceeding before the Office of Administrative Hearings does not require admission to the bar. *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 67 - 68; *Caressa Camille, Inc. v. Alcoholic Beverage Control Appeals Board* (2002) 99 Cal.App.4th 1094, 1103.

California, made and filed the Accusation and Petition to Revoke Probation (Case No. R-2020), solely in her official capacity against respondent.

2. On September 6, 1994, the Board issued Respiratory Care Practitioner License No. 17277 to respondent. On January 31, 2005, in a matter before the Respiratory Care Board entitled *In the Matter of the Accusation Against Antonio Mena*, Case No. R-1950, respondent's license was revoked, stayed, and placed on probation for a period of five years with certain terms and conditions, including:

A. Condition 2: Biological Fluid Testing

"Respondent, at his expense, shall participate in random testing, including, but not limited to, biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or a drug screening program approved by the Board....The frequency and location of testing will be determined by the Board.

"At all times, Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances."

B. Condition 3: Abstention

"Respondent shall completely abstain from the possession or use of alcohol...."

C. Condition 8: Probation Monitoring Program

"Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed."

3. Respondent and his probation monitor, Kevin Masuda, both testified. Respondent confirmed his probation monitor's testimony. In sum, respondent acknowledged that he has failed to abstain from the use of alcohol. Having submitted to biological fluid testing, he does not dispute the positive results of such tests:

A. On March 23, 2005, respondent provided a specimen which tested positive for alcohol.

B. On November 17, 2005, respondent provided a specimen which tested positive for alcohol.

- C. On December 18, 2005, respondent provided an executed Drug Questionnaire wherein he admitted that he drank two and a half beers on November 17, 2005, prior to providing a specimen.
- D. On January 12, 2006, respondent provided a specimen which tested positive for alcohol.
- E. On February 1, 2006, respondent provided a specimen which tested positive for alcohol.
- F. On March 1, 2006, respondent provided an executed Drug Questionnaire wherein he denied having consumed alcohol in the previous month.
- G. On March 13, 2006, respondent provided a specimen which tested positive for alcohol.
- H. On March 20, 2006, respondent provided a specimen which tested positive for alcohol.

4. Respondent acknowledges having missed two appointments. One, scheduled on January 5, 2006, occurred when he misplaced his keys. That appointment was subsequently made-up on January 18, 2006. The second appointment, scheduled for February 17, 2006, was missed because the program paraphernalia indicated that the clinic closed at 7:00 p.m. Respondent arrived at 6:10 p.m. and discovered that the clinic closed at 6:00 p.m. That appointment was subsequently re-scheduled for March 13, 2006.

5. Respondent further acknowledges having failed to reach Compass Vision Inc.'s² telephone system on May 28, 2005, to determine if he had been selected for random specimen testing. He relates having tried to reach CVI; however, the phone lines were not functioning properly.

6. On May 8, 2006, respondent enrolled in a 30-day residential treatment program. Respondent acknowledges that this program is his third 30-day program. His first was in 1987, his second in 1992. He completed the program on June 7, 2006.

Circumstances in Aggravation

7. Respondent's Board discipline arose, in part, from the abuse of methamphetamine.

8. Respondent, within three months of the Board's disciplinary Order, ingested alcohol.

9. Respondent has multiple failures at maintaining sobriety.

² Compass Vision Inc. (CVI) administers the Board's biological fluid testing program.

10. Respondent has participated in multiple 30-day treatment programs.
11. Respondent, on March 1, 2006, was not fully candid concerning his ingestion of alcohol.
12. Respondent's most recent date of sobriety is April 2006.
13. Respondent's failure to submit to a random biological fluid test on January 5, 2006, is not excused by his misplaced keys. Other modes of transportation exist that would facilitate his compliance with probation.
14. Respondent's failure to reach CVI on May 28, 2005, is not excused by his telephone malfunctions. Such failure compelled him, at the very least, to reach his probation monitor and solicit his or her assistance.

Circumstances in Mitigation

15. Respondent readily acknowledges a history of substance abuse and alcohol abuse. His current abuse has been limited to alcohol ingestion. He has been sober for approximately 3 months. Respondent enrolled, participated, and successfully completed three 30-day residential programs. Having recently completed his third 30-day residential treatment program, respondent has submitted to a rehabilitative regimen that includes regular 12-step participation, abstention from alcohol, and acknowledging his problem.
16. Respondent presented evidence in the form of witnesses and letters, aware of his errant history, who attest to his laudable work ethic, his professionalism as a Board licentiate, his attention to detail, and his fund of knowledge.
17. Respondent comprehends the import of his errant conduct, prior abuse of alcohol, and its nexus to Board licensure.
18. Without seeking to minimize the significance of his errant conduct, respondent relates that he has never—and would never—by the ingestion of alcohol or any substance, put a patient in harm's way.
19. The Board's focus and instant proceeding have clearly gained respondent's attention. Motivated by his own personal wellbeing, the import of these matters combined with their effect on his professional career have significantly and laudably impacted respondent.

COSTS FINDINGS

20. The Board has incurred reasonable enforcement costs in this matter in the sum of \$2,208.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend the license of respondent for abuse of alcohol pursuant to Business and Professions Code section 3750, in conjunction with California Code of Regulations, title 16, section 1399.370, subdivision (a), as set forth in Findings 2 through 4.

2. Cause exists to revoke or suspend the license of respondent for a dishonest act or falsifying a record pursuant to Business and Professions Code sections 3750, subdivision (j), and 3750, subdivision (k), as set forth in Findings 2 through 4.

3. Cause exists to revoke the probation of respondent for abuse of alcohol pursuant to Business and Professions Code sections 3718 and 3750, in conjunction with California Code of Regulations, title 16, section 1399.370, subdivision (a), as set forth in Findings 2 through 4.

4. Cause exists to revoke the probation of respondent for failing to submit to random biological fluid testing pursuant to Business and Professions Code sections 3718 and 3750, as set forth in Findings 2 through 4 and 13.

5. Cause exists to revoke the probation of respondent for failing to comply with all requirements of his probation monitoring program pursuant to Business and Professions Code sections 3718 and 3750, as set forth in Findings 2, 3, 5 and 14.

6. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining the reasonableness of costs pursuant to statutory provisions like Business and Professions Code section 125.3. The factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay and whether the scope of the investigation was appropriate to the alleged misconduct. Respondent was unsuccessful in getting any allegations dismissed. There was no evidence presented relating to respondent's financial ability to pay the costs sought. The amount sought appears to reflect that the scope of investigation was appropriate to the misconduct. Accordingly, cause exists to order respondent to reimburse the Board its costs of enforcement pursuant to Business and Professions Code sections 3753.1, 3753.5 and 3753.7 and as set forth in Legal Conclusions 1 through 5, and each of them, and Finding 20.

7. Respondent consented to a stipulated discipline that set forth the terms and conditions of his probation, including the abstention from alcohol. Within months of the commencement of his probation, he returned to the use of alcohol.

Respondent's culpability for particular violations has been established (Legal Conclusions 1 through 5, and each of them). At issue, however, is the discipline to be imposed.

The Board is guided by the findings and conclusion made by the Administrative Law Judge in this matter. Specifically, the Administrative Law Judge examined respondent's past

performance and character. In several respects, respondent was found lacking. He is an alcoholic.

Respondent now cites a sobriety date that is less than eight months old. This is not respondent's first sobriety date. Respondent has recently completed an inpatient program. That program completion is less than seven months old. This is not respondent's first inpatient program. Respondent has embarked on a new aftercare program with participation in Alcoholics Anonymous (AA). This too is not his first venture into AA participation. Respondent claims a renewed commitment to his sobriety. That claim is also not his first.

What is a "first" for respondent is the scrutiny to which he, by virtue of his licensure as a respiratory care practitioner, is now subject.

The Board has limited resources. The purpose of probation is not punitive but to assist, guide, monitor, evaluate and assess a licensee's progress, rehabilitation, and affect on public protection. Respondent possesses particular motivation. On the other hand, respondent did not initially commence the Board's rehabilitative focus comprehending the import his failures would affect and the immediate response by his probation monitor to such failures.

That respondent has sought a program largely developed by himself (e.g., voluntary enrollment in a 30-day program, voluntary participation in AA) is no surprise. Respondent has a long history of entering a program, participating in a program, and then returning to alcohol ingestion.

What has evidently escaped respondent is that having fallen under the jurisdiction of the Board, and having been found culpable for violations of both his probation and practice acts, his rehabilitation is now a shared rehabilitation. In sum, the Board now has a jurisdictional interest in assuring his rehabilitation should he seek to maintain his license. It is a shared responsibility because, in truth, respondent himself is largely responsible for his rehabilitative success.

Thus an order must be fashioned that takes into account the Board's responsibilities, the protection owed the public and the interest of the Board in monitoring respondent's sobriety; and, above all else, respondent's purportedly renewed interest in his personal sobriety. To that end, more stringent terms and conditions for the protection of the public and the effectuation of respondent's rehabilitation are mandated, including a longer period of suspension than recommended in the Proposed Decision to enable respondent to participate in a more intensive alcohol treatment program.

The objective of a disciplinary proceeding is to protect the public and the licensed profession, to maintain integrity and high standards, and to preserve public confidence in Board licensure.³ In particular, the statutes relating to Board licensure are designed to protect the

³ *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

public from any potential risk of harm.⁴ The law looks with favor upon those who have been properly reformed.⁵ Without question, respondent exercised particularly poor judgment to violate his Board probation within months of its effect. However, to his credit, respondent has responded responsibly and assumed culpability. A decision and order granting respondent a probationary license derives from evidence garnered at a hearing on this matter. In considering the conduct underlying the Accusation (Legal Conclusions 1 through 2, and each of them) and the Petition to Revoke Probation (Legal Conclusions 3 through 5, and each of them), and the circumstances in aggravation (Findings 8 through 15) and mitigation (Findings 16 through 20); the public interest will not be adversely affected by a continued grant of Board probation and the continued issuance of a properly conditioned license to respondent.

ORDER

In Respiratory Care Board of California Case No. R-2020 the Respiratory Care Practitioner License No. 17277 issued to respondent Antonio Mena is revoked. In Respiratory Care Board of California Case No. R-1950 the probation granted and stay revoking Respiratory Care Practitioner License No. 17277 issued to respondent Antonio Mena is vacated. In each matter the revocation is stayed and respondent placed on probation for a period of seven years, commencing on the effective date of this Order, on the following terms and conditions:

1. SUSPENSION As part of probation, Respondent shall be suspended from the practice of respiratory care for a period of nine (9) months, beginning the effective date of this decision. If not employed as a respiratory care practitioner or if currently on any other type of leave from employment, the suspension shall be served once employment has been established or reestablished and prior to the end of the probationary period. Respondent shall ensure that each employer informs the Board, in writing, that it is aware of the dates of suspension.

2. OBEY ALL LAWS Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of respiratory care in California. Respondent shall notify the Board in writing within 14 days of any incident resulting in his arrest, or charges filed against, or a citation issued against, respondent.

3. QUARTERLY REPORTS Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license. Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

⁴ *Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.

⁵ *Resner v. State Bar* (1967) 67 Cal.2d 799, 811.

- a. For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- b. For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- c. For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- d. For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

4. PROBATION MONITORING PROGRAM Respondent shall comply with all requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed. Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative. Respondent is encouraged to contact the Board's Probation Program at any time he has a question or concern regarding his/her terms and conditions of probation. Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against respondent's respiratory care practitioner license.

5. PROBATION MONITORING COSTS All costs incurred for probation monitoring during the entire probation shall be paid by respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased. All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.) If respondent is unable to submit costs for any month, he shall be required, instead to submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why respondent is unable to make such payment(s) must accompany this submission. Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action. In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the respiratory care practitioner license will not be renewed, until such time all probation monitoring costs have been paid. The

filing of bankruptcy by respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for costs incurred.

6. EMPLOYMENT REQUIREMENT Respondent shall be employed a minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his probation period. Respondent may substitute successful completion of a minimum of thirty (30) additional continuing education hours, beyond that which is required for license renewal, for each 8 months of employment required. Respondent shall submit proof to the Board of successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

7. NOTICE TO EMPLOYER Respondent shall be required to inform his employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director. If respondent is employed by or through a registry, respondent shall make each hospital or establishment to which he is sent aware of the discipline imposed by this decision by providing his/her direct supervisor and administrator at each hospital or establishment with a copy of this decision, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators. The employer will then inform the Board, in writing, that (s)he is aware of the discipline, on forms to be provided to respondent. Respondent is responsible for contacting the Board to obtain additional forms if needed. All reports completed by the employer must be submitted from the employer directly to the Board. Respondent shall execute a release authorizing the Board or any of its representatives to review and obtain copies of all employment records and discuss and inquire of the probationary status with any of respondent's supervisors or directors.

8. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors. Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes; however respondent must also provide his physical residence address as well.

9. COST RECOVERY Respondent shall pay to the Board the sum of \$2,208 for its costs of investigation and prosecution. That sum shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled. If respondent is unable to submit costs timely, he shall be required, instead to submit an explanation of why he is unable to submit these costs in part or

in entirety, and the date(s) he will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why respondent is unable to make such payment(s) must accompany this submission. Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action. Consideration to financial hardship will not be given should respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due. The filing of bankruptcy by respondent shall not relieve him of his responsibility to reimburse the Board for these costs.

10. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon his/her return to California and prior to the commencement of any employment where representation as a respiratory care practitioner is/was provided.

11. VALID LICENSE STATUS Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet continuing education requirements prior to his license expiration date shall constitute a violation of probation.

12. VIOLATION OF PROBATION If respondent violates any term of the probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against respondent.

13. COMPLETION OF PROBATION Upon successful completion of probation, respondent's license shall be fully restored.

14. WORK SCHEDULES Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation. Respondent shall ensure the Board has a copy of his current work schedule at all times for each place of employment. Failure to submit current work schedules on a continuous basis, shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against respondent's respiratory care practitioner license.

15. BIOLOGICAL FLUID TESTING Respondent, at his expense, shall participate

in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the Board. The length of time shall be for the entire probation period. The frequency and location of testing will be determined by the Board. At all times respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances. If respondent is unable to provide a specimen in a reasonable amount of time from the request, while at the work site, respondent understands that any Board representative may request from the supervisor, manager or director on duty to observe respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time respondent provides a specimen acceptable to the Board. Failure to submit to testing or appear as requested by any Board representative for testing, as directed shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against respondent's respiratory care practitioner license.

16. ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES

Respondent shall completely abstain from the possession or use of alcohol, any and all other mood altering drugs, substances and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professional as requested by the Board. Respondent shall ensure that he is not in the presence of or in the same physical location as individuals who are using illegal substances, even if respondent is not personally ingesting the drug(s). Any positive result that registers over the established laboratory cutoff level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against respondent's respiratory care practitioner license. Respondent also understands and agrees that any positive result that registers over the established laboratory cutoff level shall be reported to each of respondent's employers.

17. SUPERVISOR QUARTERLY REPORTS Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:

A. For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

B. For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

C. For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

D. For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Respondent is ultimately responsible for ensuring his/her employer(s) submits complete and timely reports. Failure to ensure each employer submits complete and timely reports shall constitute a violation of probation.

18. RESTRICTION OF PRACTICE Respondent may not be employed or function as a member of a respiratory care management or supervisory staff during the entire length of probation. This includes lead functions. Respondent is prohibited from working in home care or for a registry.

19. DIRECT SUPERVISION During the period of probation, respondent shall be under the direct supervision of a person holding a current and valid non-restricted Board license. "Under the direct supervision" means assigned to a respiratory care practitioner who is on duty and immediately available in the assigned patient area. The Board shall be informed in writing of and approve the level of supervision provided to the respondent while he is functioning as a licensed respiratory care practitioner. The appropriate level of supervision must be approved by the Board prior to commencement of work.

20. ALCOHOL AND DRUG TREATMENT Respondent, at his expense, shall successfully complete a treatment regime at a recognized and established program in California of at least six months duration approved by the Board. The treatment program shall be successfully completed within the first nine months of probation. The program director, psychiatrist or psychologist shall confirm that respondent has complied with the requirement of this decision and shall notify the Board immediately if he/she believes respondent cannot safely practice. Respondent shall execute a release authorizing divulgence of this information to the Board. Respondent shall inform the program director, psychiatrist or psychologist, of his probationary status with the Board, and shall cause that individual to submit monthly reports to the Board providing information concerning respondent's progress and prognosis. Such reports shall include results of biological fluid testing. Positive results shall be reported immediately to the Board and shall be used in administrative discipline.

21. PSYCHOLOGICAL EVALUATION Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required or directed by the Board, respondent, at his own expense, shall have a mental health examination, including psychological assessment and testing as appropriate, to determine his capacity to perform all professional duties with safety to self and to the public. The examination will be performed by a licensed psychiatrist or psychologist appointed by the Board. Respondent shall provide this evaluator with a copy of the Board's disciplinary order prior to the evaluation. The examiner must submit a written report of that assessment and recommendations to the Board. Recommendations for cessation of practice for safety of patients, treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent. All costs incurred for evaluation and treatment are the responsibility of respondent. Any examination required of a respondent whose violation(s) involves substance

abuse must be performed by a licensed psychiatrist or psychologist who has established expertise in the field of alcohol and drug assessment, treatment, and recovery. Respondent shall execute a release authorizing the evaluator to divulge the aforementioned information to the Board.

22. PHYSICAL EXAMINATION Within 45 days of the effective date of this decision, respondent, at his expense, shall undergo an assessment of his physical condition by a physician appointed by the Board. Respondent shall provide the examining physician with a copy of the Board's disciplinary order prior to the examination. The examining physician must submit a written report of his/her findings to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician providing written reports to the Board on forms provided by the Board. Such treatment program shall include consideration by the physician whether respondent shall obtain and take Disulfiram (Antabuse) as prescribed. If the examining physician finds that respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Board within three (3) working days. The Board shall notify respondent in writing of the examining physician's determination of unfitness to practice and shall order the respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of respondent's fitness to practice safely and has so notified the respondent. Respondent shall document compliance in the manner required by the Board. Respondent shall execute a release authorizing the physician to divulge the aforementioned information to the Board.

23. ALCOHOLICS ANONYMOUS ATTENDANCE Within 30 days of the effective date of this Decision, respondent shall participate in Alcoholics Anonymous as directed by the Division, or its designee. Respondent shall, upon request, show proof of attendance as directed by the Division, or its designee.

This Order shall become effective on December 14, 2006.

IT IS SO ORDERED this 7th day of December, 2006.

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA